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STANDARD OIL *v.* COMMONWEALTH.

Nov. 17, 1921.

[109 Va. 316.]

1. Highways (§ 158*)—Municipalities May Maintain Necessary Actions to Abate Obstructions and Other Nuisances.—The general rule is that municipalities have power to maintain such actions at law or in equity as may be appropriate to prevent and abate nuisances obstructing highways or rendering them useless.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 887.]

2. Criminal Law (§ 13*)—Statute Defining Offense Sufficient if It Supplies Standard of Guilt When Fairly Construed with Reference to Common Law.—A penal statute, to be valid, must by its language, fairly construed and with reference to common-law definitions, if the act denounced as a crime was punishable at common law, supply the standard by which the guilt of the accused is to be determined, and if it does not thus supply such standard, it is invalid for vagueness and uncertainty, but if it does it is valid.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 11.]

3. Highways (§ 153*)—Obstructions or Encroachments Are Public Nuisances.—Obstructions or encroachments on a highway or anything which interferes unreasonably or unnecessarily with the use of the highway by the public, or which makes the highway more dangerous for travelers thereon, constitute a public nuisance per se, even when they do not actually operate as an obstruction to travel.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 510.]

4. Highways (§ 153*)—Statute Authorizing Legislation by Boards of Supervisors Regarding Use of Roads and Bridges Held Valid.—Code 1919, § 2013, authorizing boards of supervisors to enact special legislation to protect roads and bridges from encroachment or obstruction or from any improper or exceptionally injurious use, is valid under Const. 1902, § 65.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 862.]

5. Highways (§ 166*)—Statute and Resolution of Board of Supervisors as to Injurious Use Held to Supply Sufficient Standards to Establish Violation.—Code 1919, § 2013, authorizing boards of supervisors to enact legislation to protect highways from any improper or exceptionally injurious use, and a resolution thereunder prohibiting the operation on the highways of any engine, threshing machine, logging or lumber wagons, heavy machinery, wagons, or tanks, automobile trucks, and all heavily laden wagons or trucks, at any time when the roads are so wet as to be materially damaged by such hauling or use, affords sufficiently definite standards by which the guilt or innocence of the person charged with a violation may be determined.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 863.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

6. Highways (§ 186*)—Resolution of Board of Supervisors as to Use of Vehicles Materially Damaging Roads When Wet Construed.—A resolution of a board of supervisors under Code 1919, § 2013, forbidding the operation on the highways of certain heavy vehicles and all heavily laden wagons or trucks when the roads are so wet as to be "materially damaged" thereby, only prohibits an improper and exceptionally injurious use of the highway under the circumstances indicated.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 863.]

7. Criminal Law (§ 829 (18)*)—Refusal of Instruction as to Elements of Offense Held Properly Denied in View of Other Instructions.—In a prosecution for operating a heavily loaded truck so as to materially damage the highway in violation of a resolution of the board of supervisors, the refusal of instructions that the mere use of the roads while they were wet or muddy was not sufficient to convict, but that the jury must believe beyond a reasonable doubt that they were in such condition that they would be materially damaged, and that, if other reasonable persons used the road at the same time with similar wagons or trucks, defendant had a right to assume that its use was proper, was harmless, where other instructions fully protected every right of defendant to be acquitted if there was any reasonable doubt of its guilt.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 745.]

8. Highways (§ 186*)—Guilt of Using Heavy Vehicles So as to Materially Damage Highway Not Dependent on Whether Other Persons Were Using Highway.—Under a resolution of the board of supervisors prohibiting the operation on the highways of heavy vehicles and heavily laden wagons or trucks when the roads were wet so as to be materially damaged thereby, the guilt or innocence of one charged with a violation did not depend upon whether reasonable persons were using the roads with similar wagons or trucks, and he was bound at his peril to determine for himself whether he would use the road.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 896.]

Error to Circuit Court, Rockbridge County.

The Standard Oil Company was convicted of an offense, and it brings error. Affirmed.

Hugh A. White, of Lexington, and *Eppa Hunton, Jr.*, of Richmond, for plaintiff in error.

John R. Saunders, Atty. Gen., *J. D. Hank, Jr.*, Asst. Atty. Gen., and *Leon M. Bazile*, Second Asst. Atty. Gen., for the Commonwealth.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.